

ADVERSE POSSESSION

Adverse possession is the possession of property without any right whatsoever. Legal title can eventually be acquired to another person's property by taking it over and using it as one's own. We have often heard it said that "possession is nine-tenths of the law". To acquire ownership in this way, the holder of the legal title must abandon the property and someone who has no right whatsoever to the property must use it exclusively as his or her own.

The period required for establishing a right to the legal title based on adverse possession is twelve years. The person in possession is known as a Squatter. One Squatter can pass on continuous possession to another Squatter. An example of this would be where a farmer has used a neighbour's field with his own land as his own for say nine years and then he transfers his own farm to his son. Then if his son continues to use the field for a further three years, he will be entitled to apply for legal title based on twelve years adverse possession.

Without Right

The first essential element is actual physical possession. The claimant must possess the property and he must do so without any right. If he gets permission from the legal owner, then he has a right to be there and he can never claim "Squatters Title". The claimant must show that the title holder abandoned his right to the property rather than assigning it. As far as the legal owner is concerned, it is a case of use it or lose it.

If the legal owner stands by and does nothing while someone else goes into possession, then he is abandoning his property.

Without Secrecy

The possession or occupation of the property must be transparent. The legal owner must know or be in a position to know that someone else is using the property. The claimant cannot claim title by adverse possession if he is occupying the property secretly. Its use must be open and visible. Proof of this would be constructing fences, planting crops or putting cattle on the land to graze. The claimant must show that he "takes over" the property. In the case of a dwelling house or other building, proof of taking it over would be to physically occupy it, renovate or re-decorate or show some other form of control over it which is inconsistent with the rights of the legal owner.

Without Force

The claimant's possession must be without force. If he forces his way onto the property despite objections from the legal owner, then he may not be able to establish Squatter's Title at a later date. Basically, the claimant must have occupied the property for twelve years in a manner which conflicts with the rights of the legal owner. There must be abandonment and/or neglect by the legal owner. There must be a "taking over" by the claimant. The adverse possession must be exclusive to all others including the legal owner who will in effect be ousted after twelve years.

What should the legal owner do to protect his interest?

Most property owners are aware of the need to prevent Squatters from acquiring rights over their property. Many however do not know what steps should be taken to prevent this happening. If someone is in possession of your property without permission, without right under a tenancy agreement or otherwise, without force and without secrecy, then you must do something within the twelve year period to show that you have not abandoned the property. The first and more practical option would be to get the person in possession to sign an agreement, either agreeing to rent the land at a certain figure (which could be nominal) and for a certain period or alternatively merely acknowledging that he or she is there with the owner's permission. If such an agreement is signed, then the person in possession will never be in a position to claim Squatter's title no matter how long he or she is there. If the person in possession refuses to sign any such agreement and is in possession for less than twelve years, then the land owner should either instigate Court proceedings without further delay or exercise some act of ownership for example cut down trees, put up a fence, etc. In the case of a dwelling house or other building, the owner should paint it or make some structural change to show that he or she is in control. After this, the twelve year period starts again. The clock is reset by the owner exercising his right as owner and breaking the Squatter's continuous possession.

What should a Squatter do to acquire legal ownership?

If a Squatter has twelve years continuous possession, he or she may apply to the Property Registration Authority (i.e. Land Registry) to have the legal title to the property transferred to him/her. The Property Registration Authority has certain criteria which must be adhered to. A statement of facts must be submitted to show that the Applicant has been in exclusive possession for twelve years. When applying for legal title based on "long possession", often the facts submitted to the Registrar to support the claim do not tell the full picture. The Registrar will very often seek further information. The information given must be in the form of a sworn statement. Sometimes, written Declarations by neighbours may be useful as corroborative evidence as also may be photographs taken during the twelve year period. For the sake of clarity, twelve years is the minimum period. One can apply for registration after being in exclusive possession for fifteen or twenty years or more provided there is an unbroken period of twelve years immediately preceding the application.

Each application for title based on adverse possession will be considered on its own merits and although many of the basic facts are (and for the reasons given, must be) similar, no two cases are the same.

If the Registrar is satisfied from what he has read and seen that it is more likely that the Squatter has established an entitlement to be registered, he will send notice to the registered owner and to the owner of any registered charge on the title. The Registrar will also send notice to anyone he considers to have a possible interest in the property for example the owners of adjoining property or property across the road. The person receiving the notice may either consent to the application or object within a certain period.

If no objection is made, then the registration will proceed once the time limit for objecting has expired.

If an objection is made, whether by the legal owner or someone else, the Objector will be required by the Registrar to set out the reasons in a sworn statement within a certain number of days. A copy of the Objector's statement will then be sent to the Applicant who will in turn be given a certain number of days to reply. Thus the correspondence goes on between the Applicant, the Registrar and the Objector, until such time as the Registrar is satisfied either to proceed with the transfer of title to the Applicant or to reject the application.

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